

A (Roman) Family Affair:

*Pro Cluentio*

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Dana Gornick

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*On my honor, I have neither given nor received unauthorized aid on this thesis.*

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## I. Introduction

*Pro Cluentio* defends Aulus Cluentius Habitus Minor, falsely charged with poisoning and killing his stepfather, Staius Albius Oppianicus, or Oppianicus the Elder. Cluentius is accused by his stepbrother, Oppianicus the Younger, at the bidding of his depraved mother, Sassia. In defending Cluentius, and earning his acquittal, Cicero unveils a heinous list of crimes committed by the alleged victim, Oppianicus. Over the course of the trial, various facets of Roman family life and family law come into play, highlighted by Oppianicus's misdeeds, and identified throughout as a basis for his crimes.

This paper attempts to understand how the Roman family functioned during the late Roman Republic by examining Oppianicus the Elder through the lens of Marcus Cicero's legal speech, *Pro Cluentio*. Oppianicus' crimes, as exposed by Cicero in his defense of Aulus Cluentius Habitus Minor, illustrate the darker aspects of the Roman family. This paper will also evaluate Oppianicus in terms of how he both complied with and transgressed against pre-classical Roman laws, particularly with regard to family law and succession.

This paper aims, through various sections, to explore the intersection of pre-classical Roman law with the Roman family as exhibited in Cicero's *Pro Cluentio*. The first two sections of this thesis provide background on the Roman *familia*, which was comparable to a small-scale monarchy dominated by a single *pater familias*, and the Roman legal process, and how these functioned in the late Roman Republic. Although *Pro Cluentio* was delivered in a criminal case, which was handled by the state, Cicero's defense raises issues grounded in Roman family law. For that reason, this paper will briefly discuss Roman private law in addition to a longer discussion of Roman public

law, specifically with regard to criminal law and the eight criminal courts. The following sections introduce the famous Roman lawyer and orator Marcus Cicero, his personal history, and his writing style. After contextualizing the legal and familial landscape surrounding *Pro Cluentio*, the next section breaks down the elements of Cicero's speech, Cluentius's trial, and Oppianicus's crimes.

For these reasons, this paper concludes with two sections examining specific areas of Roman family law that are featured in Cicero's defense speech. These sections also reflect on *Pro Cluentio* with respect to Roman jurist perspective on the various aspects of Roman family law that Cicero raises during the trial. These include *patria potestas*, and succession and heirs.

## II. The Roman *Familia* and the Law

The Latin word *familia* is best translated into 'household,' rather than 'family.'<sup>1</sup> This understanding of the word's meaning also better reflects the role of the Roman family within the late Republic. Rather than representing a social contingency, the Roman family primarily functioned as a legal unit whose structure was optimized for the regulation of property holding and disposition.<sup>2</sup> This function can be observed in family law case holdings of the early Republic, during which time the law made little distinction between son and slave.<sup>3</sup> Unlike today, in which the Western practice of family law is more concerned with the wellbeing of the members of the family, Roman family law was

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<sup>1</sup> Wheelock, 2011, 523.

<sup>2</sup> Frier, 2004, Ch. 1, 1

<sup>3</sup> Frier, 2004, Introduction, 2

primarily devoted to righting matters of economic interest.<sup>4</sup> Furthermore, at the core of Roman family law were several concepts. The first, *pater familias*, refers to the Roman “father of the family.” The second, the agnatic relationship, traces the paternal lineage through a family, and is a means of recognizing the *pater familias* for a given *familia*. Finally, the concepts of *sui iuris* versus *alieni iuris* refer to one’s state as being either “in his own power” or “in the power of another,” and help to define the place of an individual within the Roman household.<sup>5</sup>

The Roman family was dominated by the *pater familias*, a single male head of the family. As the only person fully recognized by the law, the role of the *pater familias* and the corresponding concept of *patria potestas* contributed to the existence of the family as a household regime characterized by the exercise of power rather than by the bond of kin. As the head of the family, the *pater familias* was said to be *sui iuris* and in his own power. His children on the other hand, regardless of age, are said to be *alieni iuris*, meaning that they are in the power of their father. Due to this fact, they are subject to the *pater*’s unfettered power of life and death. Additionally, only the head of the family can own property, meaning that anything his children acquire legally belongs to him alone. In contrast, the powers of a Greek father served only protective purposes, such as those surrounding guardianship, and these ended when children came of age.<sup>6</sup> With regard to a *pater*’s siblings and spouses, all Roman citizens were said to be in the *potestas* of their oldest living male ancestor. This meant that if a woman’s father were alive, she was still in his *potestas*, regardless of being married to another man. Even if her husband was *sui*

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<sup>4</sup> Frier, 2004, Introduction, 2

<sup>5</sup> Frier, 2004, Ch.1, 1

<sup>6</sup> Frier, 2004, Introduction, 2

*iuris* and a *pater familias* for his own household, Roman law dictated that she belonged to the *potestas* of her own father.

*Patria potestas*, and therefore the basis of the Roman family, is based on the agnatic relationship. This is traced exclusively through the male line, meaning that a man's agnates are those persons who are under the *potestas* of the same *pater* as him.<sup>7</sup> Alternatively, his cognates are mere blood relatives. For example, a man's maternal uncle, while his cognate, is not his agnate, and is therefore not under the same *potestas* as him. In addition to being held together by the agnatic relationship, the family was also held together by *pietas*, which the Roman jurists, a tiny elite of legal professionals who were charged with conserving and developing the law, deemed the "emotional glue" of the Roman household.<sup>8</sup> *Pietas* refers to the traditional sense of duty that is owed to other family members, rather than a sentiment believed to stem from genuine affection. This value is reflected in the law's concern not with setting standards for family life, but with the implications of family structure regarding matters of power and wealth.

The Roman elite generated most of its income through landed investments, and most of its prestige through tradition. For these reasons, the upper class heavily emphasized familial continuity from generation to generation. Rather than risking investment in uncertain entrepreneurial endeavors, such as those in the commerce or manufacturing sectors, the Roman elite chose to focus on strategies of succession. Succession, or the conveyance of family wealth to succeeding generations, was integral to Roman family law to a much greater degree than is the case with modern family law.

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<sup>7</sup> Frier, 2004, Ch. 1, 6

<sup>8</sup> Frier, 2004, Introduction, 2

When considering the complexity of the process of succession, there is reason to believe that these interests exerted significant influence on the nature of related laws in ancient Rome.

### III. The Roman Legal Process

The legal system of ancient Rome spanned over a thousand years of legal development, from the Twelve Tables circa 449 BC, to the *Corpus Iuris Civilis*, or the Code of Justinian, in AD 529.<sup>9</sup> The continued use of Latin legal terminology in many legal systems today reflects the historical significance of Roman law and the Roman legal system. This paper is primarily concerned with the pre-classical period of Roman law, which covered the years 201 to 27 BC, since Cicero delivered the speech of interest, *Pro Cluentio*, in 66 BC.<sup>10</sup> This speech is a matter of *ius publicum*, or public law, which serves to protect the interests of the Roman state, and for that reason this section will focus primarily on *Justicia Publica* and criminal proceedings handled by the state.<sup>11</sup>

The basis for Roman law, for both *ius publicum* and *ius privatum*, dates back to the 5<sup>th</sup> century BC with the Laws of the Twelve Tables, specifically Tables VIII and IX.<sup>12</sup> The Tables have been described as a legal code of sorts, and consist of a sequence of definitions of various rights and procedures.<sup>13</sup> Historically, the Tables were said to have come about as a result of the Conflict of the Orders, or the ongoing social struggle from

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<sup>9</sup> Smith, 1875, 301

<sup>10</sup> Grant, 1990, 113

<sup>11</sup> Smith, 1875, 648

<sup>12</sup> Pharr, 1961, Section 2.

<sup>13</sup> Smith, 1875, 688

494 to 287 BC between the Patrician class and the Plebeians.<sup>14</sup> One of the most important concessions won in the Plebeian struggle for political equality was the establishment of the Twelve Tables. Influenced by Greek legislations such as the Laws of Solon, the Tables codified basic procedural rights for all Roman citizens, and were posted publicly so that all Romans could know them. Although they are no longer extant, the Twelve Tables endured as a significant basis of the law throughout the Roman Republic.

Another source of pre-classical Roman law, specifically of *ius publicum*, is the Roman Republic's constitution: the *mos maiorum*, "the custom of the ancestors," or "way of the elders." This was an unwritten set of principles passed down primarily through precedent, and served as the code from which the ancient Romans also derived their social norms. Many of the concepts that originated in the Roman constitution can be found in modern constitutions. These include notions such as the separation of powers, checks and balances, vetoes, quorum requirements, and regularly scheduled elections.<sup>15</sup> However, unlike most modern constitutions, the constitution of the Roman Republic was not formal, nor official. It remained a largely unwritten, dynamic entity that evolved constantly throughout the life of the Republic, until its progressive erosion during the 1<sup>st</sup> century BC.

The turbulent conditions of the late Republic post-Sulla saw a rapid expansion of criminal law. In the earlier years of the Republic, the law of delict was typically imposed to resolve conflicts between concerned parties. This practice entailed the compensation of one party by the other. This application of *ius privata* dates back to the Twelve Tables, which ordained specific procedure for many conflicts between private citizens. However,

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<sup>14</sup> Nicholas, 1992, 6

<sup>15</sup> Lintott, 1999, 4.

for some very serious offenses, such as murder, the Tables specified criminal sanctions. The penalty, which was almost always death, was imposed by direct intervention of the public authority without any indication of its being a substitute for private vengeance. The late Republic saw an increase in this type of state “interference”, with illegal activities being treated as crimes punishable by state penalties rather than as delicts punishable by compensation of private individuals.

In the late Roman Republic, there were eight *quaestiones perpetuae*, permanent commissions established to investigate crimes.<sup>16</sup> In the 1<sup>st</sup> century BC, these were *De Repetundis*, *Majestatis*, *De Sicariis et Veneficis*, *De Parricidio*, *De Falsis* or *Testamentaria*, and *De Vi Publica*,<sup>17</sup> and reflected the offenses which were the chief subject of *Judicia Populi* and *Publica*.<sup>18</sup> These permanent eight criminal courts were established for the trial of various specified offenses, and were presided over by a praetor.<sup>19</sup> A praetor was assigned to one type of court on a permanent basis, and appointed judges who acted as jurors in voting for guilt or innocence. Under Sulla, all of these judges were to be taken from the Senatorial class. In 70 BC, the Lex Aurelia of Lucius Aurelius Cotta partially reversed Sulla’s monopoly of judgeships by the Senators. The compromise law enacted that the judges should be chosen in equal parts from the three classes—one third each from the Senators, the Equites, and the Tribuni Aerarii, or

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<sup>16</sup> Greenough, 2012, 2.1

<sup>17</sup> Smith, 1875, 957 The eight permanent criminal courts of the Republic were those of bribery, treason, poisonings, homicide, the killing of a family member, fraud, false testimony or fraud regarding wills, and acts against the public peace.

<sup>18</sup> Greenough, 2012, 2.1

<sup>19</sup> Smith, 1875, 956. Praetor: title granted to men acting in one of two official capacities: the commander of army; or, an elected magistrate, assigned various duties. The latter presided over criminal trials.

landed citizens.<sup>20</sup> The Lex Aurelia fixed roughly seventy judges to serve as jurors for a given case, whose verdict was either acquittal or condemnation.<sup>21</sup> The *quaestiones* looked into *crimina publica*, or “crimes against the public,” such as were worthy of the attention of a praetor. Examples are homicide, fraud, poisoning, or bribery.<sup>22</sup> The penalty on conviction was usually death, but sometimes other severe penalties were used, such as exile.

#### **IV. Cicero, Personal History**

Marcus Tullius Cicero, lawyer, politician and philosopher, was one of the greatest Roman orators, or perhaps orators in general, of all time. Born in 106 BC to a wealthy Equestrian family of Arpinum, he was taken to Rome for his education with hopes of leading a public career.<sup>23</sup> According to Plutarch, when Cicero entered politics he was urged to change his name, since “cicer” was Latin for chickpea. Instead, he said that he would make “Cicero” more famous than “Scaurus” or “Catulus,” which were Latin for “lame” and “puppy,” and were both undignified yet famous names themselves.<sup>24</sup>

In Cicero’s time, to be cultured meant to be able to speak both Latin and Greek. For that reason, Cicero was educated in ancient Greek philosophy, history, and poetry.<sup>25</sup> It was these teachings that gave him much of his great understanding of rhetoric. Some of his more prominent influences were the works of the Greek poet Archias, and of the

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<sup>20</sup> Smith, 1875, 650

<sup>21</sup> Smith, 1875, 649

<sup>22</sup> Smith, 1875, 648

<sup>23</sup> Greenough, 2012, 1.1

<sup>24</sup> Perrin, 1923, 83.

<sup>25</sup> Greenough, 2012, 1.1

Greek rhetorician Apollonius.<sup>26</sup> By using his broad education to translate Greek philosophical works into Latin, Cicero afforded himself opportunities usually reserved only for the traditional Roman elite. One such opportunity was his study of Roman law under the famous Roman jurist Quintus Mucius Scaeveola. Cicero also studied alongside Servius Sulpicius Rufus, who would go on to become one of the renowned pre-classical era Roman jurists.<sup>27</sup>

Cicero began his career as a lawyer around 83 BC.<sup>28</sup> In his first major case in 80 BC, Cicero successfully had his client, Sextus Roscius, acquitted of the charge of parricide.<sup>29</sup> The case, tried by one of Sulla's cohorts, was a brave undertaking by Cicero in opposing the dictator. In 79 BC, Cicero traveled to Greece, Asia Minor, and Rhodes, where Hellenistic culture and philosophy would further inspire and influence him to arguably become history's greatest orator, perhaps second only to Demosthenes.<sup>30</sup>

Later, Cicero's ambitious nature allowed him to obtain honors which would normally only have been attainable by members of the Roman aristocracy. He successfully ascended the *cursus honorum*, holding each magistracy at or near the youngest possible age; he became quaestor in 75 BC at the age of 31, aedile in 69 BC at the age of 37, and praetor in 66 BC at the age of 40, when he served as president of the "Reclamation," or extortion, Court. He was then duly elected consul at age 43 in 63 BC.<sup>31</sup>

Cicero grew up in a time of civil unrest and war. Sulla's reign led to a new constitutional framework that undermined *libertas*, the fundamental value of the Roman

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<sup>26</sup> Greenough, 2012, 2.1

<sup>27</sup> Greenough, 2012, 2.1

<sup>28</sup> Greenough, 2012, 1.1

<sup>29</sup> Greenough, 2012, 1.1

<sup>30</sup> Greenough, 2012, 3.1

<sup>31</sup> Greenough, 2012, 1.1

Republic. On the other hand, Sulla's reforms also strengthened the position of the equestrian class, contributing to the class's growing political power. While Cicero was both an *eques* and a *novus homo*, he staunchly remained a Roman constitutionalist. In line with this, one of Cicero's most notable qualities as a politician was his refusal to compromise his Republican values. However, compared to those of some of his contemporaries, such as Pompey or Crassus, his ideals were more honorable and unselfish, as he was deeply devoted to the ideas of *libertas*, *concordia*, and equity. Furthermore, Cicero's Republican views, as he explains in his political works, *De Re Publica* and *De Legibus*, and his unwillingness to bend in them, made him both highly regarded, but also widely hated. His commitment to the constitution and traditional values of the Republic, which founded his persistent opposition to the mechanisms or advocates for popular representation, left him with an appearance of hating the poor. For example, Cicero believed in an ordered form of liberty, in contrast to that of the democracies of ancient Greece and the populist movements under Tiberius and Gaius Gracchus, which saw liberty as a total lack of domination within society. Cicero, on the other hand, supported the *optimates* and the preservation of senatorial dominance over civic rights.<sup>32</sup>

As an orator and writer, Cicero possessed a wide range of techniques and an exceptional command of the Latin tongue. Cicero is credited with transforming Latin from a utilitarian language into a versatile literary medium capable of expressing abstract and complicated thoughts with clarity. More specifically, he played a leading role in what is now known as the "golden age" of Latin. In addition to his speeches, Cicero also

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<sup>32</sup> Kennedy, 2014, 488

published a large number of works on rhetoric, religion, and moral and political philosophy, such as *De Oratore*, *De Republica*, and *De Natura Deorum*. He also introduced the Romans to the chief schools of Greek philosophy and created a Latin philosophical vocabulary.<sup>33</sup>

Some other notable events in Cicero's life history are his prosecution of the Catiline conspirators, his exile and return under Julius Caesar, and his feud with Mark Antony. After Mark Antony, Octavian, and Lepidus formed the Second Triumvirate, Cicero was deemed an enemy of the state, his name was added to the list of proscriptions, and he met his death in 43 B.C.<sup>34</sup> Nonetheless, Cicero is remembered as "not the name of a man, but of eloquence itself."<sup>35</sup>

## V. The Writing and Style of Cicero

In the Roman Republic, laws were passed and officers were elected at voting assemblies consisting of orchestrated counting by centuries and tribes, convened at the central seat of the government, the forum.<sup>36</sup> The *contio*, an informational mass meeting of all citizens, also took place in the forum.<sup>37</sup> In the political conditions of ancient Rome, any semblance of written news circulation was absent, as was literacy among most of the common people. This being the case, conversation and public addresses were the only

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<sup>33</sup> In particular, he created many neologisms derived from Greek to be used in Latin, such as *evidentia*, *humanitas*, *qualitas*, *quantitas*, and *essentia*.

<sup>34</sup> Greenough, 2012, 1.7

<sup>35</sup> Honeycutt, 2006, 10.1.112. ...*apud posteros vero id consecutus ut Cicero iam non hominis nomen sed eloquentiae habeatur.*

<sup>36</sup> Greenough, 2012, 2.1

<sup>37</sup> Hornblower, 2012, 175.

means of disseminating political ideas.<sup>38</sup> Even these were limited, since meetings could only be called by a magistrate, and could only be addressed by persons permitted by the magistrate.

Under such circumstances, oration was a powerful political instrument. It is also important to consider that during the Roman Republic, the only means of improving one's status in the social hierarchy was through leading a successful political career. Next to military achievements, the strongest appeal to public favor was through the skill of oration. An orator's power to move the masses regarding public matters was the most probable means of ascending the *cursus honorum*. Furthermore, lawsuits afforded ambitious young politicians the opportunity to make their names known and to gain public support. Prompted by these political reasons, many prosecutions and private suits were taken on by Romans aspiring to climb in their political careers. Although such contentions technically ended with the consulship, there remained constant rivalry between the two partners of the consulship over the reputation for leading statesman. For all of these reasons, and given the political conditions of Rome, the art of oratory may have been more esteemed and of greater practical value during the late Roman Republic than at any other point in Roman history.

Beginning in the second century BC, the introduction of Greek art and letters into Rome began to influence Roman literature, and with it, oratory.<sup>39</sup> Speeches came to be looked at as artistic works in addition to being practical tools. This tendency was first observed with Servius Sulpicius Galba and Marcus Lepidus. In Cicero's opinion, Galba

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<sup>38</sup> Greenough, 2012, 2.1

<sup>39</sup> Greenough, 2012, 2.1

was the first Roman to employ the peculiar arts of the orator.<sup>40</sup> These refer to speech elements such as digressions, exaggeration, the use of commonplaces, and appeals to emotion, passion, and pity. In the works of Lepidus, the full effect of Greek art began to manifest itself.<sup>41</sup> In the eyes of Cicero, Lepidus was the first Roman orator to show Greek “smoothness.”<sup>42</sup> One of Cicero’s greatest influences was Lucius Crassus, from the generation of orators immediately preceding Cicero. From Crassus one can discern a different role for the speech; instead of just a tool for manipulating juries and assemblies, the speech was a work of statesmanship and philosophy.<sup>43</sup>

As the study of oratory as an art began to expand in Rome, within this study two distinct styles emerged. The first, the Attic style, stood more for directness, force, and naturalness. Members adhering to this stylistic school attempted to return to the simple styles of Xenophon and Lysias. However, in avoiding artistic flare, Atticism was criticized for its meagerness and lack of vitality. The second, the Asiatic style, represented more displays and affectations. In its extremes it could be overstrained or artificial, as Asiatic orators typically sought the approval of their audience and an image of sophistication.<sup>44</sup>

This climate coincided with Cicero’s upbringing, education, and political career, and likely fostered his ultimate artistry in the skill of oration. While he himself was under the impression that he exemplified the best and truest form of Atticism, in reality Cicero

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<sup>40</sup> Greenough, 2012, 2.1.

<sup>41</sup> Greenough, 2012, 2.1

<sup>42</sup> Greenough, 2012, 2.1.

<sup>43</sup> Greenough, 2012, 2.1

<sup>44</sup> Greenough, 2012, 2.1

struck more of a middle course between the two styles.<sup>45</sup> His speeches demonstrate his familiarity with the Greek rhetorical systems as well as the directness of Demosthenes. However, to satisfy the public appetite for overstatement and zeal, Cicero had to chart his course between Atticism and Asianism. He did so following a style like that of the Rhodian school: an Asiatic sect that shared Attic tendencies. In keeping with the Rhodian style, Cicero was disparaged for using exaggeration, false pathos, and artificial rhetoric typical of other Asiatic orators. Despite such criticism, Latin oratory and language still reached the pinnacle of their development with Cicero.<sup>46</sup>

The English words *Ciceronian*, meaning “eloquent” and *cicerone*, meaning “local guide,” are both derived from Cicero’s name. Cicero was an energetic writer with interests in a wide array of subjects, consistent with the Greek philosophical and rhetorical traditions of his education. He drew much of his inspiration from Demosthenes, Isocrates, and Lysias, which is observable in his semi-Asiatic and Greek-influenced writing style.<sup>47</sup> A large part of *Pro Cluentio* falls into the grand style of rhetoric, as the section detailing Oppianicus’s crimes was designed to move the jury, and was characterized by the use of emotional appeals and subversions against his moral character.

While certain aspects of his writing style can be consistently observed throughout his works, such as his infatuation with the word *quidem* (“indeed”), Cicero admitted that he does “not always adopt the same style,” asserting, “what similarity is there between a

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<sup>45</sup> Von Albrecht, 2003, 127

<sup>46</sup> Greenough, 2012, 2.1

<sup>47</sup> Von Albrecht, 2003, 130; Greenough, 2012, 2.1

letter and an oration in court or at a public meeting?”<sup>48</sup> Accordingly, Cicero’s style varies depending on both the medium and the context of expression. In Cicero’s legal orations, he replaces more pale phrases that might have been found in his rhetorical writings with more vigorous and drastic wording. Similarly, some adjectives and adverbs disparaging an opponent occur in the orations but not in the philosophical writings.<sup>49</sup>

One can also observe how seemingly epideictic elements end up having a persuasive function in Cicero’s judicial orations.<sup>50</sup> His orations in court also differ from his other types of speeches or writing in their frequency of digressions. Cicero believed it was “often useful to make a digression in order to move your audience.”<sup>51</sup> In doing so, one could divert and subconsciously influence the feelings of the jury, making digressions important to the process of persuasion, especially when employed using subjects like praise and reproach, descriptions, or moral reflections in court.

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<sup>48</sup> Cicero, *Ad Familiares* 9. 21. 1 Nec enim semper eodem modo. Quid enim simile habet epistula aut iudicio aut contioni?

<sup>49</sup> Von Albrecht, 2003, 13; Cicero, *Pro Cluentio*, 23. Cicero dramatizes Oppianicus by referring to him as *singulari scelere et audacia* (a man of singular wickedness and audacity).

<sup>50</sup> Von Albrecht, 2003, 19; Cicero, *Pro Cluentio*, 138. *Ex quo intellegi potuit id, quod saepe dictum est: ut mare, quod sua natura tranquillum sit, ventorum vi agitari atque turbari, sic populum Romanum sua sponte esse placatum, hominum seditiosorum vocibus ut violentissimis tempestatibus concitari.* (And this brought home the truth of what has often been remarked—that as the sea, though naturally calm, becomes rough and stormy beneath a strong wind, so is it with the Roman people; peaceable enough when left to themselves, the speech of a demagogue can rouse them like a furious gale.)

This display of Cicero’s rhetorical skill as an orator not only serves to impress the jury, but also to sway them subconsciously. Here, Cicero cleverly approaches the subject that the Roman people, and potentially this very jury, have been incited against Cluentius through rumor. By using vivid imagery and eloquent language to breach this subject, Cicero can then gradually soften the jury to his claims.

<sup>51</sup> Cicero, *De Oratore*, 2. 77. 311 “...digredi... permovendorum animorum causa saepe utile est.”

Cicero also uses lots of parentheticals and interjections in his orations. One example is Cicero's preference for the feature *quamvis felix sit, sicut est*: "happy as he may be (and he really is)."<sup>52</sup> In this sentence, a state is first regarded as hypothetical through the use of the subjunctive mood in *sit*, then confirmed as real with the indicative mood in *est*. These changes in mood within the same phrase can affect the rhythm of the delivery, and can influence the audience. They also correspond to an abrupt change in viewpoint, which can produce an effect of irony.

In contrast to the confidence displayed in his political speeches, in his pleas, Cicero typically begins by informing his audience that he is nervous, or reminds them of his lack of experience in comparison to his adversary, so as to underplay his abilities as an orator, and to humanize himself before the judges.<sup>53</sup> This tactic is also employed throughout the body of his speeches as a whole, in that he starts with modest statements, and then slowly builds towards pointing out contradictions in his opponent's argument. This builds his ethos. As he attempts to move the jury, Cicero will employ his hybrid Attic-Asiatic style with the use of questions, gradations, anaphora, and geminations, as is observed in *Pro Cluentio*. In the following passage, Cicero demonstrates his preference for vivid imagery and anaphora as a means of persuasion:

123. *Quae cum ita sint, videamus quid tandem censores de illo iudicio corrupto iudicasse dicantur. Ac primum illud statuamus, utrum quia censores subscripserint ita sit, an quia ita fuerit illi subscripserint. Si quia subscripserint, videte quid agatis, ne in unum quemque nostrum censoribus in posterum potestatem regiam permittatis, ne subscriptio censoria non minus calamitatis civibus quam illa acerbissima proscriptio posset adferre, ne censorium stilum,*

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<sup>52</sup> Von Albrecht, 2003, 110; Cicero, *Pro Sexto Roscio Amerino*, 22.

<sup>53</sup> Cicero, *Pro Cluentio*, 4. *Equidem quod ad me attinet, quo me vertam nescio.* (As far as I myself am concerned, I hardly know which way to turn.)

*cuius mucronem multis remediis maiores nostri rettulerunt, aequae posthac atque illum dictatorium pertimescamus.*

“With this being so, we ought to consider what at last the censors are said to have decided about that corrupt jury. And first we ought to establish whether this thing is so because the censors framed it this way, or if they framed it because it was so. If it is because they framed it so, consider what you all should do, so that you will not give monarchical power over each one of us to the censors for the future, so that the censorial signature would not be able to bring more calamity to the citizens than that harshest proscription, so that we may not become frightened from this point on by the censorial pen, of whose point by many remedies our ancestors blunted, as much as that dictatorial pen.”

In this passage, Cicero reflects on the corruption of the trial before Junius, and on the censorial animadversion that took place as a result. As Cicero alludes to in *Pro Cluentio*, Junius was the praetor that presided over an earlier trial in which Oppianicus was convicted and then exiled for attempting to poison Cluentius. After the verdict, the censors intervened on the claim that the trial was corrupt, and punished Junius and the trial’s entire tribunal for taking bribes. In light of this, the *cum* clause that begins this passage refers to Cicero’s seemingly negative opinion of censorial power, which, granted his rank as a senator, seems feasible. He then addresses the censors’ verdict about the corruption, asserting that there are only two possible justifications: either the trial was deemed corrupt based on ulterior motives of the censors, or the trial was indeed corrupt, and the censors ruled it as such. Cicero addresses the former option, but instead of literally referring to this possibility as “the former,” he says, *Si quia subscripserint*. This wording is more awkward and verbose, and perhaps indicates Cicero’s intentionality in drawing attention to this possibility. Cicero then strings together three negative result clauses, forewarning what could happen lest the censors are not kept in check. We see the use of anaphora with *ne...ne...ne* and the use of gradation as Cicero progresses from using *regiam* to describe the potential problems with censorial power to using

*dictatorium* at the end. By saying *dictatorium* so close to the end of his remarks, Cicero may again be intentionally drawing attention to this word arrangement. In doing so, Cicero leaves the image of what is likely Sulla's dictatorship in the minds of the jury. Another consideration is the meaning of the verb *subscripsere* in this excerpt. While it may literally refer to "to record" or "to sign," it also may be interpreted as meaning "to accuse" or "to proscribe." Interestingly, this word choice may also be intentional by Cicero, in order to liken the censors to Sulla and his proscriptions, and to scare the jury. This passage demonstrates some of Cicero's stylistic and rhetorical tendencies, as well as his abilities as an orator.

## **VI. *Pro Cluentio***

In the defense speech *Pro Cluentio*, Cicero illustrates the downfall of the *gens Cluentia*, a powerful Roman family of the late Republic, at the hands of Statius Albius Oppianicus. First appearing in Roman history during the Social War, the family hailed from the town of Larinum. They were likely of Oscan origin, as Larinum was originally an Oscan territory. In 66 B.C. Aulus Cluentius Habitus Minor, belonging to this ancient family, was arraigned for the murder of his stepfather, Oppianicus. Cluentius was accused by his mother Sasia and his stepbrother Oppianicus the Younger, of killing Oppianicus six years prior in 72 BC. To complicate the matter further, dating back to a prior trial in 74 BC, Oppianicus himself was prosecuted by Cluentius and convicted for trying to poison him. However, Cluentius was rumored to have bribed the jurors into condemning his stepfather and having him exiled. Due to the alleged corruption of this previous trial, Cluentius found himself in a position of extreme unpopularity in Rome.

For this reason, he feared false conviction at the hands of a jury who likely had ill will towards him, and employed Cicero to defend his case. In this defense speech, Cicero seeks to clear Cluentius of the charge of patricide as well as to clear his name of disrepute. To do so, Cicero delivers a speech broken into three main parts. In the first, he defends Cluentius's honor and points out his mother's wickedness, in the second, he details the life of appalling criminality that Oppianicus led, as well as his destruction of Cluentius' family, and in the third, he addresses the trial before Junius and dismisses the main charge against Cluentius.<sup>54</sup>

In the first part of this speech, Cicero begins with his evaluation of the prosecution's speech, asserting that the large part of it rests on unfounded unpopularity leftover from the trial before Junius, and that only a small piece applied any method appropriate for the main charge of poisoning. Cicero states that he will "preserve the same division of the subject"<sup>55</sup> in his defense, speaking separately to the issues of the trial before Junius and to the charges brought against his client. He continues by humbling himself before the jury, claiming that he will "have a great deal of difficulty in dealing"<sup>56</sup> with the issues of Cluentius's unpopularity. He further acknowledges that trial's corruption, but insists that his client was unduly believed responsible. In contrast to his more subdued opening remarks, Cicero speaks boldly to this allegation, declaring, "By the odium sought to be excited against [Cluentius], the common safety of all men is

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<sup>54</sup> Grant, 1990, 113

<sup>55</sup> Cicero, *Pro Cluentio*, 1. *Itaque mihi certum est hanc eandem distributionem invidiae et criminum sic in defensione servare.* (And, therefore, I have determined to preserve the same division of the subject in my defense, speaking separately to the question of unpopularity and to that of the accusation.)

<sup>56</sup> Cicero, *Pro Cluentio*, 2. *...perspicio quantum in agendo difficultatis et quantum laboris sit habitura.* (...it is likely to involve in its treatment a degree of toil and difficulty of which I am well aware.)

imperiled.”<sup>57</sup> In technical terms, this is a typical example of overstatement used by Cicero. In functional terms, this statement serves to move the judges and establishes an association between the safety of Cluentius and that “of all men.”

Cicero also comments on the wickedness of Sassia, claiming that she “for many years has been wishing her son dead,” and cites how Sassia forced her own daughter to divorce her husband, Aulus Aurius Melinus, so that she could marry him, her son-in-law.<sup>58</sup> In doing so, he seeks to highlight how truly good Cluentius must be at heart, given how evil of a mother he had. This approach also victimizes Cluentius rather helpfully, and appeals to the pity of the jury. Cicero continues this technique, urging, “that this bench [...] will be to [Cluentius] a harbor at last, and a refuge for the hitherto miserable and tempest-tossed bark of his fortunes.”<sup>59</sup>

To deal with the complicating issue of Cluentius’s unpopularity, Cicero addresses the trial before Junius, in which Cluentius was said “to have corrupted a tribunal with money, in order to procure the condemnation of his innocent enemy, [Oppianicus].”<sup>60</sup> Cicero makes it clear that this leftover unpopularity not only arose on false grounds, but “ought to be powerless.”<sup>61</sup> In referring back to this previous trial, Cicero also segues into what the trial unearthed about Oppianicus. Cicero’s argument for why Cluentius did not

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<sup>57</sup> Cicero, *Pro Cluentio*, 3. *Agitur enim in criminibus A. Cluenti proprium periculum, in invidia causa communis.*

<sup>58</sup> Cicero, *Pro Cluentio*, 12. *...quae multos iam annos et nunc cum maxime filium interfectum cupit, singulare scelus maiore odio dignum esse ducetis.*

<sup>59</sup> Cicero, *Pro Cluentio*, 7. *hunc locum consessumque vestrum, quem illi horribilem A. Cluentio ac formidolosum fore putaverunt, eum tandem eius fortunae miserae multumque iactatae portum ac perfugium futurum.*

<sup>60</sup> Cicero, *Pro Cluentio*, 9. *Corrupisse dicitur A. Cluentius iudicium pecunia, quo inimicum innocentem Statium Albiu[m] condemnaret.*

<sup>61</sup> Cicero, *Pro Cluentio*, 5. *...sic in hoc loco falsa invidia imbecilla esse debet.*

bribe the tribunal rests on the appalling extent of Oppianicus's criminal history, since doing so would prove that Cluentius had no need to corrupt the results of the trial, as his stepfather's conviction was inevitable.

In the second part of his speech, Cicero goes on to list out Oppianicus's extensive criminal record and long history of depravity. He begins with an account of how Oppianicus had his brother-in-law, Marcus Aurius, murdered for his inheritance. At the time, Oppianicus was married to Magia, from the Auri family in Larinum. Her brother, Marcus Aurius, was taken captive in Gaul during the social war at Asculum and was believed to be dead. Magia and her other two brothers died, leaving their mother Dinea and the son of Magia and Oppianicus as their heirs. However, an informant came to Dinea to tell her that her son, Marcus Aurius, was still alive, enslaved in Gaul. Dinea entreated her relatives to recover her last living child, then made a will leaving her fortune to her son, Marcus Aurius, and to her grandson, Oppianicus's son. Dinea fell ill thereafter, and died. Oppianicus had arranged for a doctor to poison her, and then changed her written will before it was made official. To secure the entire inheritance for his son, and indirectly for himself, Oppianicus had Marcus Aurius killed in Gaul.<sup>62</sup>

Next, Cicero accounts how Oppianicus killed Aulus Aurius, then Sassia's son-in-law turned husband. Word of Oppianicus's treachery against Marcus Aurius had circulated, and he found himself in danger of being exposed. Aulus Aurius had received correspondence from the Auri family members that traveled to Gaul in order to investigate Marcus Aurius's whereabouts. Upon arrival they learned of their brother's murder, and sent word back to Larinum of the conspiracy. Aulus announced the news

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<sup>62</sup> Cicero, *Pro Cluentio*, 12-23.

publicly, and threatened to prosecute Oppianicus for murder. Oppianicus then fled to the camp of Quintus Metellus, who helped him in raising a body of armed men. He returned with these to Larinum, declared that Aulus Aurius, along with a group of other elected officials, had been proscribed by Sulla, and then had all of them killed.<sup>63</sup>

After killing her husband, Oppianicus asked Sassia to marry him. She refused, Cicero remarks, not because of his impudence (*audacia*),<sup>64</sup> and not because he was “red with her husband’s blood,”<sup>65</sup> but because Oppianicus had three sons. Coveting Sassia’s wealth, Oppianicus sent for his two infant sons, one whom he had by Novia, the other by Papia. Within ten days of one another, both sons had mysteriously died. Shortly after the death of his two children, Oppianicus and Sassia married. Cicero remarks, “Because other men are often covetous of money for the sake of their children, that man [Oppianicus] thought it more agreeable to lose his children for the sake of money.”<sup>66</sup> By making this statement, Cicero artfully implies that Oppianicus murdered his two children in order to marry Sassia for her wealth. Continuing his use of Asianism, Cicero comments, “I see, judges, that you, as becomes your feelings of humanity, are violently moved at these enormous crimes now briefly related by me.”<sup>67</sup> By telling them that they already appear as such, this statement helps to further move the judges and ground Cicero’s point.

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<sup>63</sup> Cicero, *Pro Cluentio*, 23-25.

<sup>64</sup> Cicero, *Pro Cluentio*, 27.

<sup>65</sup> Cicero, *Pro Cluentio*, 27. ...*domum viri sui sanguine redundantem reformidat.*

<sup>66</sup> Cicero, *Pro Cluentio*, 28. *Ita quod ceteri propter liberos pecuniae cupidores solent esse, ille propter pecuniam liberos amittere iucundum esse duxit.*

<sup>67</sup> Cicero, *Pro Cluentio*, 29. *Sentio, iudices, vos pro vestra humanitate his tantis sceleribus breviter a me demonstratis vehementer esse commotos.*

Cicero continues with his account of Oppianicus's crimes, referring to how he poisoned his own wife, Cluentia, who was Sassia's sister-in-law and Cluentius's aunt. He also discusses how Oppianicus poisoned and killed his older brother along with his pregnant wife and their unborn child, in order to keep his brother's undivided inheritance. By the laws of intestate succession, and granted Oppianicus's brother had not made a will designating another heir, all of his wealth would come to Oppianicus if he were the only remaining male agnate.

To further appall the jurors, Cicero brings up how Oppianicus convinced his aunt to have an abortion and then marry him. Before his death, Oppianicus's uncle Cnaeus Magius had made Oppianicus his heir, but had also left his wife a large sum in his will granted that she had their unborn son. Oppianicus, aware of the condition, paid his dead uncle's wife, his own aunt, to abort her child and Oppianicus's own unborn cousin, and then marry him so he could secure his uncle's wealth in full.

In his perpetual lust for lucre, Oppianicus plotted the assassination of Asinius of Larinum, a wealthy young man. In hopes of gaining his father's wealth from him by force, Oppianicus arranged for Avilius, an acquaintance of Asinius and whom Cicero describes as "a man of abandoned character and great poverty,"<sup>68</sup> to pretend that he was on his deathbed. Claiming that he wished to make his will, Avilius called on witnesses with the help of Oppianicus. While Oppianicus pretended that Avilius was Asinius, the witnesses, who did not know either Avilius or Asinius, signed the will in Asinius's name. Once the will was signed and sealed, Avilius suddenly recovered and then lured Asinius outside of the city to his death. After Asinius had been missing for several days, Avilius

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<sup>68</sup> Cicero, *Pro Cluentio*, 36. *perdita nequitia et summa egestate*

was brought before the triumvir Quintus Manilius regarding Asinius's whereabouts. He confessed immediately, admitting that he had murdered the man according to Oppianicus's plan. Oppianicus was tried for murder, but having bribed Manilius, a man whom Cicero described as "a wanton and profligate buffoon," he was acquitted.<sup>69</sup> Cicero recounts this series of events to set up a line of evidence implicating Oppianicus in the tampering incident in the trial before Junius.

Having uncovered the shocking extent of Oppianicus's moral corruption, Cicero then moves into the details of the trial of the Junius. To frame the issue, Cicero clarifies that Cluentius "could not avoid prosecuting [Oppianicus], and that he could not possibly escape being convicted."<sup>70</sup> He continues, describing how contentions arose between the stepfather and stepson over the public rights of Larinum and the House of the Martiales.<sup>71</sup> Deciding that they must disconnect Cluentius from the Martiales, Oppianicus and Sassia plotted to kill him. In addition, Oppianicus was all too aware of the fact that his stepson had never made his will. If Cluentius died without any will, all of his property and wealth would come to his mother, whom Oppianicus could more easily get out of the way, and come by the inheritance himself. Since Cluentius had no more living male agnates, and did not have any wife or children, Sassia was the next designated statutory heir by the laws of intestate succession.

With this in mind, Oppianicus plotted to poison Cluentius.<sup>72</sup> He enlisted the help of Caius Fabricius, a man "notorious for every sort of vice and dishonesty" according to

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<sup>69</sup> Cicero, *Pro Cluentio*, 39. *ex petulanti atque improbo scurra*

<sup>70</sup> Cicero, *Pro Cluentio*, 43. *ex quo simul utrumque, et huic accusare et illi condemnari, necesse fuisse intellegitis.*

<sup>71</sup> Cicero, *Pro Cluentio*, 43.

<sup>72</sup> Cicero, *Pro Cluentio*, 45-59

Cicero.<sup>73</sup> At the time, Cluentius had fallen ill and was in the care of the doctor Cleophantus. Fabricius tried to bribe the doctor's slave, Diogenes, to poison their patient. However, Diogenes reported this all to his master, who told Cluentius of the plot. Learning this, Fabricius had his freedman Scamander recover the poison and the money to avoid exposure. Scamander was accused by Cluentius for attempted poisoning, and was found guilty in court. Cluentius then proceeded against Fabricius, who was also condemned by the jury. Finally, Oppianicus was tried himself. After his conviction, he was exiled from Rome.

Next, Cicero begins to discuss the trial before Junius, in which Cluentius accused Oppianicus of plotting his death. To introduce the circumstances of that trial, Cicero declares, "Now I will show you that [Oppianicus] was brought before the courts as a criminal, in such a way that he came before them already condemned."<sup>74</sup> This statement is an example of Cicero's preference for dramatics and disparaging terminology in his legal speeches. In this instance, one can observe his tendency to use the word *scelus* in order to cast a guilty label on Oppianicus, which he does in *Pro Cluentio* repeatedly.<sup>75</sup> To gain the trust and sympathy of the court, Cicero likes to begin with a confession of his lack of experience and speaking ability. He voices his inadequacy, claiming, "Indeed, I am always very nervous when I begin to speak."<sup>76</sup> This concession establishes Cicero's ethos with the jury, implying that by no measure of skill in speech will Cicero prove his case, but that by sheer fact his client will be undoubtedly shown innocent. By starting

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<sup>73</sup> Cicero, *Pro Cluentio*, 46. ...*cumque essent vitiis atque improbitate omnibus noti.*

<sup>74</sup> Cicero, *Pro Cluentio*, 49. *Cognoscite nunc ita reum citatum esse illum, ut re semel atque iterum praeiudicata condemnatus in iudicium venerit.*

<sup>75</sup> Cicero, *Pro Cluentio*, 15; 31. *O mulieris scelus incredibile; tametsi in ipso fraterno parricidio nullum scelus praetermissum videtur.*

<sup>76</sup> Cicero, *Pro Cluentio*, 51. *Semper equidem magno cum metu incipio dicere...*

like this, Cicero has set up an environment in which there are no expectations for him, and in which whatever he says is factual, since he has so humbly admitted his inability to persuade anyone. In doing so, any of Cicero's eventual success will be even more surprising, and even more convincing.

Moving forward, Cicero begins to describe the events that transpired surrounding the corruption of the trial. He concedes that the trial was indeed corrupt, using a rhetorical question to establish credibility and common ground with the jury. He asks himself, "Do [I] deny that that sentence was procured by corruption? I do not deny that, but I say that the corruption was not practiced by my client."<sup>77</sup> Cicero continues by establishing a condition, stating "If I prove that it was not bribed by Habitus, I prove that it was by Oppianicus,—I clear Habitus,"<sup>78</sup> which creates a situation where Cicero does not literally have to prove the guilt of Oppianicus, but only that his client could not have been responsible.

To address how Cluentius garnered so much unpopularity from the trial, Cicero goes into the details of Oppianicus's tampering with the judge, Caius Attius Staienus.<sup>79</sup> Oppianicus attempted to influence the judge's decision by giving him a large sum of money, and entreated him to sway the other judges. However, Staienus, having a history of "plunder and judicial embezzlement,"<sup>80</sup> did not want to split the money with the other judges. Instead, he kept the bribe secret, and decided that Oppianicus being condemned

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<sup>77</sup> Cicero, *Pro Cluentio*, 63. "quid ergo? negasne illud iudicium corruptum esse?" Non nego, sed ab hoc corruptum non esse confirmo.

<sup>78</sup> Cicero, *Pro Cluentio*, 64. *Si doceo non ab Habito, vinco ab Oppianico: si ostendo ab Oppianico, purgo Habitem.*

<sup>79</sup> Cicero, *Pro Cluentio*, 65-78.

<sup>80</sup> Cicero, *Pro Cluentio*, 68. *statuit ad easdem esse sibi praedas ac suppressiones iudiciales revertendum*

was in his own best interest. Taking this course would allow him to keep all of the money for himself without complication, or risk that he be exposed. When the votes were finally to be given, Staienus voted to condemn Oppianicus. Since the low moral character of Staienus was widely known by the rest of the jury, many of them assumed that he had taken a bribe from the prosecution to convict. Because of Staienus's vote, the tribunal that presided over the trial appeared corrupt, gaining the public's hatred. This is where Cluentius's unpopularity stemmed from, since the people believed he must have bribed Staienus, which was a violation of the *Lex Corenlia De Repetundis*. Despite the existence of this law, which reserved the power to exile judges for taking bribes, the practice still happened rather frequently in ancient Rome, as is reflected by the implementation of additional, harsher laws punishing bribery throughout the Republic.<sup>81</sup>

Cicero continues to disprove any tampering by Cluentius by tracing the exchange of money between Oppianicus and Staienus.<sup>82</sup> He cites the transfer of six hundred forty thousand sesterces to Staienus's house, and points out that this was the amount appropriate to bribe sixteen judges, according to what would have been Oppianicus's plan. He also refers to Cluentius's accounts, claiming that there is no evidence of the transfer of that exact sum of money to Staienus or to anyone else. Cicero also asserts, rather boldly, that the censors at the time deemed the judges corrupt in the trial before Junius in order to gain popularity with the people, who had been excited against the tribunal by hearsay. In seeking political gain, the censors actually hurt Cluentius and made him look responsible for the corruption, since the trial was ruled in his favor.

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<sup>81</sup> Smith, 1875, 986. *Lex Acilia, Lex Cornelia, Lex Julia*.

<sup>82</sup> Cicero, *Pro Cluentio*, 82-87.

Finally moving to the charge brought against Cluentius, Cicero begins by addressing the law that Cluentius is accused under: the *Lex Cornelia de Sicariis et Veneficis*, which punished various kinds of murder, poisoning, and corrupt acts leading to death.<sup>83</sup> The *Leges Corneliae* were the various laws passed during the dictatorship of Sulla and by his influence.<sup>84</sup> The *Lex Cornelia de Sicariis et Veneficis* was passed in 82 BC, and made provisions for cases of poisoning, as well as provisions against those who made, sold, bought, possessed or administered poison. The law also provided that a magistrate or senator who conspired was to be condemned in *judicium publicum*. Cicero points out the specific wording of the law regarding who and what the law penalizes, claiming that none of the descriptions apply to Cluentius in this case.<sup>85</sup> While he then claims that he does not want to earn his client's acquittal through "any quibble of law,"<sup>86</sup> Cicero continues the same tactic by pointing out, "Aulus Cluentius, a Roman knight, is prosecuted according to that law by which the senators, and those who have served magistracies, alone are bound."<sup>87</sup> Here, Cicero refers to Sulla's revisions of the Sempronian law, and how Cluentius technically is not eligible to be prosecuted beneath it. However, he continues to claim that he will rest his defense in proving Cluentius's innocence, and not in an appeal to technicalities of the law.

Cicero then begins to enumerate all of the reasons why Cluentius is innocent of the charge.<sup>88</sup> He denies that Cluentius had poison prepared for Oppianicus, but instead that Oppianicus had fallen from his horse and died a few days after. Cicero claims that

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<sup>83</sup> Smith, 1875, 687.

<sup>84</sup> Smith, 1875, 686.

<sup>85</sup> Cicero, *Pro Cluentio*, 149.

<sup>86</sup> Cicero, *Pro Cluentio*, 149. *...qui tamen defendi causam suam lege noluit.*

<sup>87</sup> Cicero, *Pro Cluentio*, 156.

<sup>88</sup> Cicero, *Pro Cluentio*, 149-177.

Sassia, after her husband's death, began a false investigation into his demise. He holds that she tortured slaves in order to force false testimony that would implicate her son, Cluentius, in Oppianicus's death, which is a violation of the *Lex Cornelia de Falsis*.<sup>89</sup> In accusing Sassia of orchestrating a false charge against Cluentius, Cicero risks punishment under the *Lex Remmia de calumnia*, or the law of slander. Under this law, if an accuser failed in his proof, he faced punishment by loss of rank and exile.<sup>90</sup> On the other hand, if Cluentius were proven innocent, Sassia and Oppianicus the Younger faced punishment beneath the same law for intentionally bringing false accusations to trial.

## VII. *Patria Potestas in Pro Cluentio*

Within the Roman family, the *pater familias* enjoyed a list of unique, unquestionable powers as head of the family. One of these was *ius vitae necisque*, the exercise of power of life and death.<sup>91</sup> Unless the Censors took notice of a gross abuse of power, the application of this power was unchallengeable. For example, in 63 BC one of the Catiline conspirators was simply put to death by his father's order.<sup>92</sup> Instances like these were not restricted until the start of the second century AD, when regulation of this power began to be implemented.<sup>93</sup>

With regard to Oppianicus's extensive list of victims, not all of them can be regarded as homicide cases, since not all of them violate the *Lex Cornelia de sicariis et*

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<sup>89</sup> Smith, 1875, 518.

<sup>90</sup> Smith, 1875, 238.

<sup>91</sup> Frier, 2004, Ch. 3, 2.

<sup>92</sup> Frier, 2004, Ch. 3, 2.

<sup>93</sup> Frier, 2004, Ch.3, 2.

*veneficis*, or the *Lex Pompeia de Parricidiis*.<sup>94</sup> These address assassinations, poisonings, and the killing of a parent or relative. While the death of Marcus Aurius, the poisoning of his mother-in-law Dinea, and the poisoning of his older brother and his pregnant wife, are obvious examples of murder, the killing of his two infant sons cannot be regarded as such. Since Oppianicus is their father, they are his agnates and in his *potestas*. As the *pater familias* in this situation, Oppianicus reserves the power of *ius vitae necisque* when applied to those within his *potestas*. It was also customary, though not a prerequisite, for a *pater familias* to consult a *consilium*, or an informal council of relatives and close friends, before exercising *ius vitae necisque potestas* on his children.<sup>95</sup> While the act may still be appalling, the killing of these two children is technically not unlawful according to the statutes governing the Roman Republic. In fact, we see the preservation of the power of *ius vitae necisque* into the third century A.D. through the writings of the Roman jurists. In 227 A.D. Emperor Alexander Severus is said to have told a man by the name of Artemidorus that if he “encountered difficulty in applying corporal punishment to his adult son, he could ask for assistance from a magistrate to intervene and apply the punishment.”<sup>96</sup> If the law vested that amount of power in *patria potestas* centuries after Oppianicus allegedly would have killed his children, then perhaps the Roman legal climate in the first century BC also would have upheld this exercise of *patria potestas*.

However, when considering the charge in the trial before Junius, in which Oppianicus was convicted for the attempted murder of Cluentius, the power of *ius vitae necisque* cannot be exercised. Since Cluentius is the stepson of Oppianicus, he is not in

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<sup>94</sup> Smith, 1875, 687.

<sup>95</sup> Frier, 2004, Ch. 3, 2.

<sup>96</sup> Frier, 2004, Ch. 3, 10, Case 93.

his *potestas*. Cluentius is actually in *sui iuris*, and is not in the *potestas* of anyone else, since his father passed away, leaving him the oldest living male member of the family Cluentia.

Oppianicus was also motivated in his crimes by another privilege of *patria potestas*: the way in which children acquire for the *pater*. In modern society, children can earn residuals on their own behalves, whereas children in Roman society could not acquire anything for themselves.<sup>97</sup> Roman children had no independent estates. They owned and possessed no property of their own, regardless of their age, so long as they remained in the power of a *pater familias*. Even in cases where a third party transferred property or money to children, or compensated them for services, the *pater familias* still acquired all of it.<sup>98</sup> This allowed him to use his children to amass wealth for his household.

Aware of this power, Oppianicus had his brother-in-law killed in Gaul so that all of his mother-in-law Dinea's fortune would go to her grandson, Oppianicus's own son. Dinea had named the younger Oppianicus as one of the heirs in her will, along with her three sons, all now dead. Oppianicus later changed her will to name his son as the sole heir to her wealth, to ensure that none of the inheritance could be passed on to the relatives of Dinea's deceased sons. In doing so, Oppianicus ensured himself the inheritance, in line with the Roman legal concept that children cannot acquire anything for themselves, and that anything they do acquire belongs to the *pater familias*. In this case, Oppianicus is the *pater*, so his son's inheritance automatically comes to him.

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<sup>97</sup> Frier, 2004, Ch. 3, 41.

<sup>98</sup> Frier, 2004, Ch.3, 45.

### VIII. Succession in Ancient Rome

Succession refers to the conveyance of family wealth to succeeding generations. In ancient Rome, even the upper class families had to confront very high levels of mortality, so succession was crucial in maintaining familial power. This part of Roman law is unique in three main ways. The first is that it recognizes a dead man's last will, the second is the bulk and complexity by which Roman lawyers upheld it, and the third is the application of universal succession, or the foundation of this principle.<sup>99</sup> For purposes of this paper, universal succession will be the primary topic of discussion.

The Roman Republic enjoyed a rather liberal system of private property, holding that every man had the right to do as he would with what was his own. Universal succession was the succession of one man to the sum of the rights and duties of another. This applied only to patrimonial rights, however, meaning only those rights included in the law of property and obligations. Succession upon death falls into two parts, based on if a will does or does not exist.<sup>100</sup> The universal successor upon death is the *heres* and the complex of rights and duties to which he succeeds is the *hereditas*. The *heres* may be appointed by will, or if there is no will, he may be designated by law.<sup>101</sup> However, in all circumstances, there must be a *heres*. The primary purpose of the Roman will is to ensure the devolution of the *hereditas* as a whole. Within a will, one can name multiple *heredes*.<sup>102</sup> One type of *heres*, the *suus heres*, or family heir, is anyone in the *potestas* or *manus* of the dead man who becomes *sui iuris* upon his death.

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<sup>99</sup> Nicholas, 1992, 234.

<sup>100</sup> Nicholas, 1992, 235.

<sup>101</sup> Nicholas, 1992, 236.

<sup>102</sup> Nicholas, 1992, 237.

These very laws governing succession allowed Oppianicus to manipulate his family's wealth into his own hands. For example, when Oppianicus killed his older brother and his pregnant wife, he ensured himself all of his brother's wealth both by intestate succession and by universal succession. *Pro Cluentio* does not make it clear whether Oppianicus's brother left a will or not. However, by the laws of intestate succession, meaning in the absence of a valid will, his brother's wealth would come to Oppianicus, since he is the closest remaining male blood relative, and his wife and unborn child were both dead. In the existence of a valid will, *Pro Cluentio* alludes to the idea that Oppianicus was named as one of his brother's *heredes* along with his wife and unborn child. In Roman law, a man cannot die in part testate and in another intestate.<sup>103</sup> In essence, this means that if a man leaves part of his estate to any named *heres*, and provisions have not been made for the rest of his estate, everything comes to the one named *heres*. Or in this case, the one remaining *heres* would be Oppianicus, so he would inherit all of his brother's estate, regardless of what portion had originally been designated to him by the will, since part cannot be testate, and the rest intestate.

Regarding the attempted murder of Cluentius, Oppianicus acted out of motivation under the laws governing how a mother inherits from her child. Since Cluentius had never written a will, and he was the last male Cluentii according to the details in *Pro Cluentio*, his inheritance would go to his mother by the laws of intestate succession. According to the jurist Ulpian, when a man died without a will, a praetor would pass his inheritance on to one of the man's male cognates, to his children, or to his wife, through

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<sup>103</sup> Frier, 2004, Ch.4, 2.

*bonorum possessio*.<sup>104</sup> This term refers to the effective right to succeed by the deceased's male cognates, meaning brothers or children, who are in *sui iuris*. If none of these existed, the surviving spouse reserved the right to succeed. If there were also no surviving spouse, the deceased's mother could inherit. Granted that Oppianicus and Sassia wanted Cluentius dead, it is likely that none of these preceding statutory heirs existed, leaving Sassia as statutory heir. It is also likely that Oppianicus knew that if he killed Sassia after she inherited from her son, that he could claim the wealth for himself either through *bonorum possessio*, or simply by claiming the wealth as his own, since Sassia was in his *manus*, and therefore anything that she acquired belonged to him.<sup>105</sup>

## IX. Conclusion

Ultimately, Cluentius was acquitted of the charges due to Cicero's artful narrative on Oppianicus' criminal conduct, as well as his insightful untangling of the ambiguities of the trial before Junius. Cicero's delivery of *Pro Cluentio* sheds light on the inner workings of the Roman *familia*, including the darker ones, as they are embodied by Oppianicus. In his plea, Cicero covers a broad range of concepts relating to Roman family law, and with them, Roman family life. Through his rendition of Oppianicus's crimes, Cicero introduces us to the enigmatic concept of *patria potestas* and its accompanying rights, and to the legal complexity and weight of succession law. Throughout the trial, we are also acquainted with some of the *Leges Corneliae* and other criminal statutes that governed *ius publicum* during the Republic. While he does not rest his case in *Pro Cluentio* primarily on legal arguments, Cicero employs many other

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<sup>104</sup> Frier, 2004, Ch. 4, 16 (Case 168)

<sup>105</sup> Frier, 2004, Ch. 3, 1.

techniques used by modern trial lawyers to earn the trust of the jury. For example, throughout his speech, he juxtaposes the moral character of Cluentius with that of the accusers, his stepbrother and wicked mother. In suits regarding family law today, many cases are grounded in undermining the character of the opposing side. Also, in many modern criminal trials, the defense sometimes turns to bolstering the integrity of the defendant after attempting to cast doubt on the prosecution's case, as well as on the character of the plaintiff. Cicero's decision to use this tactic indicates both his skill as an orator, and his political awareness towards his audience. It also, perhaps, demonstrates a feature of the time, in which the jury cared more about the character of the defendant than they did the substance of the charges brought against him.

Unlike most intellectual endeavors, in which the Romans served as the cultural disciples of the Greeks, the Romans were the masters when it came to the law.<sup>106</sup> They created an articulated system of legal principles that were capable of abstraction, and turned the law into a thoroughly scientific subject.<sup>107</sup> For these reasons, Roman law served as a basis for contemporary legal practice throughout the Western world, as can be observed in the largely Latin-derived legal glossaries of modern Western legal systems. While some aspects of Roman family life differ sharply from those of the modern Western family, the laws surrounding the *familia* provide us with insight into how the Roman family operated within itself, and how it functioned within society. From the law, we can gather that the Roman family was a utilitarian entity with a primarily fiscal purpose, governed by tradition, and preserved by the agnatic relationship. We can also

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<sup>106</sup> Nicholas, 1992, 1.

<sup>107</sup> Nicholas, 1992, 1.

conclude that the Roman family, much like that of today, was far from perfect, yet crucial to the condition of the society to which it belonged.

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